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NOTE

From:	Presidency
To:	Working Party on Tax Questions (Direct Taxation)
Subject:	Draft Directive on shell entities - Presidency steering note

In view of the meeting of the Working Party on Tax Questions (Direct Taxation) on 26 November 2024, delegations will find attached the Presidency steering note.

„UNSHELL" – A WAY FORWARD

PRESIDENCY STEERING NOTE

WORKING PARTY ON TAX QUESTIONS (DIRECT TAXATION), 26 NOVEMBER 2024

I. INTRODUCTION

On 22 December 2021, the Commission submitted a proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (the "UNSHELL" proposal). Analysis of the proposal was carried out under the consecutive Presidencies. In 2023, the Working Party on Tax Questions (High Level) (HLWP) concluded that further discussions will be needed in order to find compromise solutions on outstanding issues.

On 11 June 2024, at the meeting of the HLWP, the Commission presented a note with a potential new approach for the UNSHELL proposal[1]. The design of this new approach drew on the discussions of delegations at the Council and included the following elements: (i) reporting obligations limited to entities in scope that are found to be at high risk of being used in abusive tax schemes, (ii) automatic exchange of the reported information, which (iii) enables the Member States receiving information on high-risk entities to use such information to take administrative measures for the identification of abusive schemes that erode their tax base. The new approach no longer sets out an economic substance test for determining whether an entity is a shell or not. It identifies entities that present a high risk for being involved in a specific abusive tax scheme and in this way, facilitates tax administrations' work in tackling such schemes. The new approach does not require Member States to apply common tax consequences against shell entities or identified tax abusive schemes. It rather gives information to, and relies on the best endeavours of, the receiving Member State to use this information, in order to investigate structures involving high-risk entities, as appropriate.

[1] WK 7824/2024.

At the HLWP meeting on 11 June 2024, many delegations expressed support to the new approach or at least were ready to further explore the new approach via continued technical work.

Based on guidance received by delegations, the Hungarian Presidency conducted a preliminary analysis and also sought the views of the Commission, on how a new approach could be taken forward, possibly through a revised compromise text of the UNSHELL directive. As a result of the preparatory works, the Presidency has identified the main topics which would deserve more detailed technical and possibly policy discussion among delegations. In particular, the Presidency invites the delegations to exchange views on the following main areas outlined under the new approach: (i) scope of the proposal; (ii) hallmarks; (iii) reporting obligations and exchange of information; (iv) administrative measures. On this basis, the current steering note of the Presidency covers explanations and drafting suggestions only on those Articles of the Directive that correlate with these selected areas.

In this note, the Presidency presents possible text amendments compared to the latest full compromise text of the UNSHELL proposal which was prepared by the Spanish Presidency for the meeting of the Working Party on Tax Questions (Direct Taxation) on 5 September 2023 (WK 10232/2023).

The purpose of the Working Party meeting on 26 November 2024 is to explore whether the drafting suggestions presented in this note are appropriate to translate the new approach into a workable legal text, to clarify whether delegations have the same understanding about the practical implications of the new approach, and to find out which areas may need further elaboration.

II. DRAFTING SUGGESTIONS

Delegations will be invited to exchange views on the following main areas:

1. Scope	Article 1 (Subject matter); Article 2 (*Scope*); Article 2a (*Excluded entities*); Article 3 (*Definitions*)
2. Hallmarks	Article 4 (*Hallmarks for the identification of reporting entities*); Article 9 (*Rebuttal of the presumption*)
3. Reporting obligation and exchange of information	Article 5 (*Filing of information by reporting entities*); Article 6 (*Amendments to Directive 2011/16/EU*); Article 8ad (*Scope and conditions of mandatory automatic exchange of information according to Directive [OP]*)
4. Administrative actions	Article 7 (*Administrative actions by Member States identified*)

Below, the main areas will be introduced as follows: (i) in the box, a short explanation will be provided on the drafting suggestions; (ii) the drafting suggestions will be presented; (iii) in a separate box, targeted questions related to the drafting suggestions will be addressed to the delegations.

1. SCOPE

Explanations on Article 1, Article 2, Article 2a and Article 3:

In general, the text of the UNSHELL proposal in Article 2 and Article 2a could be simplified to achieve better reading and easier understanding.

Article 1 now explains the subject matter under the new approach. This is to identify entities which are at high risk to engage in aggressive tax planning; that is, namely, when they lack substance. Furthermore, the Member State of the entity is no longer obliged to undertake any action further to exchanging the reported information. The receiving Member State is the one that may be affected by the tax planning conducted through the entity in question and should have the necessary information in order to take appropriate administrative action, as needed.

Article 2 is simplified and contains the scope of the Directive, which comprises all entities that are tax resident in a Member State.

Article 2a, by derogation from Article 2, excludes certain entities from the scope. These entities do not need to go through the hallmarks, to determine whether they are captured by the scope of the reporting obligation, as they do not present a level of risk that would require them to report. The substance of the article remains unchanged to what was previously discussed; yet, the text is simplified and streamlined.

Furthermore, there would be two specific changes to the terms ‘tax period’ and ‘regulated financial entity’.

Tax period: In Article 2a, the term ‘tax period’ would be used. ‘Tax period’ would be defined as a yearly period, and to accommodate concerns of a few delegations, the definition in Article 3(4) would be amended.

Regulated financial entitiy: Article 2a(1)(f) of the UNSHELL compromise text lists ‘regulated financial entities’ among entities that would be ‘excluded entities’ and thus would not be subject to the requirements set out in the Directive. In this regard, Article 3(2) provides for a list of entities which would be regarded as ‘regulated financial entities’. The revised compromise draft proposes to extend the list of entities that will be regarded as ‘regulated financial entities’, based on suggestions from delegations. Special purpose vehicles (SPVs) of regulated UCITS/AIFs, are indirectly regulated through UCITs/AIFs and would be on the list, to be aligned also with P2. To achieve this, a new letter (x) would be added to the end of Article 3(2). This extension to the definition of ‘regulated financial entities’ would result in a limited reduction in scope of the UNSHELL proposal, as added special purpose vehicles would not be subject to reporting. This addresses delegations’ concerns to reflect proportionality between the objectives of the UNSHELL proposal and the increase in the administrative burden.

Drafting suggestions:

CHAPTER I
GENERAL PROVISIONS

Article 1
Subject matter

This Directive lays down **a series of hallmarks that constitute risk** indicators of minimum substance for the **mandatory** ~~identification of manifest cases of misuse of shell~~ **reporting of certain** entities in Member States ~~and rules for disallowing certain tax benefits for entities that do not meet those indicators and are found to be shell entities,~~ as well as rules on **the** exchange of information **in order to facilitate the Member States concerned undertaking administrative actions with regards to such entities**.

Article 2
Scope

This Directive applies to all entities that are considered tax resident in a Member State~~, and that are not excluded entities within the meaning of Article 2a~~.

~~This Directive shall not preclude Member States from applying domestic or agreement-based provisions required for the prevention of tax avoidance, tax evasion, tax fraud or abuse, provided that such provisions are compatible with Union law, including this Directive.~~

Article 2a
Excluded entities

1. **By way of derogation from Article 2,** ~~Entities~~ **an entity** falling within any of the following categories shall not be subject to the requirements set out in this Directive **for a given tax period**:

   (a) ~~entities~~ **an entity** with revenues **which for a tax period** ~~that~~ do not exceed EUR 200 000 on a twelve-month basis**,** or the proportionally reduced amount for shorter tax periods**,** and with a total book value of assets or, in the absence of book value, a total tax value of assets of less than EUR 2 000 000 at the end of the tax period;

   (b) ~~entities~~ **an entity** with less than 75% of ~~their~~ **its** revenues **in the tax period** being relevant income**;**

   (c) an entity with less than 75% of the total book value or, in the absence of book value, a total tax value of its assets that are

relevant assets at the end of the tax period~~and with no relevant assets at the end of the tax period~~;

(**d**~~c~~) ~~entities~~ **an entity** that ~~are~~ **is** not engaged in cross-border ~~activity~~ **activities** on any of the following grounds:

(i) more than 60% of the book value **or, in the absence of book value, a total tax value** of the entity's relevant assets was located or registered outside the Member State of the entity **at the end of the tax period**;

(ii) more than 60% of the entity's relevant income **in the tax period** was earned via cross-border transactions;

(**e**~~d~~) ~~companies~~ **an entity** which ~~have~~ **has** a transferable security admitted to trading or listed on a regulated market or a multilateral trading facility as defined in Article 4, point (22), of Directive 2014/65/EU of the European Parliament and of the Council[2];

(**f**~~e~~) **a** regulated financial entit**y**~~ies~~;

(**g**~~f~~) **a** governmental entit**y**~~ies~~.

2. **The** Member State **of an excluded entity** shall require ~~excluded entities to~~ **such entity to** maintain documentary evidence in support of ~~their~~ **its** exclusion available for inspection ~~at the~~ **upon** request ~~of the tax authority of the Member State of the entity~~ in accordance with national law.

Article 3

Definitions

For the purposes of this Directive the following definitions shall apply:

[(1)]

(2) 'regulated financial entities' means any of the following:

[(a)-(w)]

(x) **an entity owned at 95% or more by one or more AIFs referred to in point (i) or one or more UCITS referred to in point (j), directly or through one or several AIFs or UCITS, and that:**

– **operates exclusively, or almost exclusively, to hold assets or invest funds for the benefit of the aforementioned AIFs or UCITS; or**

– **exclusively carries out activities ancillary to those performed by such aforementioned AIFs or UCITS.**

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[2] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (*OJ L 173, 12.6.2014, p. 349–496).*

[(3)]

(4) 'tax period' means a tax year **or any other appropriate period for tax purposes or, where there is no annual tax return in a Member State,** a calendar year ~~or any other appropriate period for tax purposes~~;.

[(5)-(12)]

Questions to delegations on drafting suggestions on Article 1, Article 2, Article 2a and Article 3:
Q1: Do you support the new approach to the subject-matter of the proposal?
Q2: Do you support the drafting suggestions above, and especially the one suggesting to extend the definition of 'regulated financial entities' in Article 3(2) to certain SPVs as proposed under new letter (x)?

2. HALLMARKS

Explanations on Article 4 (former Article 6) and Article 9:

As per the new approach, the "minimum substance" has been replaced by the term "hallmark", The Directive would not include an economic substance test for determining whether an entity is 'shell' or not. It has been suggested to modify accordingly Article 1 on the Subject Matter.

Entities that are captured by a certain combination of 'hallmarks' are not presumed to be shell entities, but only considered 'high risk', which makes them 'reporting entities'. This means that they would be obliged to report to their tax authority every year. Entities that are not captured by (at least) one of the prescribed combinations of hallmarks would not be required to report.

There is no decision (and/or a presumption) on whether an entity is a shell or not, the hallmarks give only an indication of the (lack of) substance, which is a possible risk factor in engaging in aggressive tax planning schemes. Entities which would meet a certain combination of hallmarks would be regarded as high-risk entities and consequently, incur an obligation to report (on conditions).

In order to reflect the new approach, the term 'hallmark' would be added to Article 3(12) – with the same definition as in DAC6. The definition of 'hallmark' to be included in Article 3 would be the following:

(12) 'hallmark' means a characteristic or feature of an entity that presents an indication of a risk of lack of substance, as listed in Article 4.

As to specific 'hallmarks', Article 4(2) has been modified to accommodate concerns of one delegation about a small pool of eligible persons.

Reporting under UNSHELL and DAC6 should be considered complementary. DAC6 is transaction-focused and the primary responsibility for reporting lays with the intermediaries (or, taxpayers). It is eventually unclear who actually reports. There is already a hallmark D2, which focuses on entities without economic substance, but it is more general in nature. By contrast, UNSHELL is entity-focused. It sets out clearly when and what to report. It is also clear that every entity needs to report on a yearly basis, which establishes a more systematic approach. In both cases, however, reporting provides the receiving Member State with the information necessary to run their risk analysis tools and investigate further if needed.

The rebuttal provision (former Article 9) is redundant under the new approach, because there is no identification of shell entities under the 'hallmark' approach. Therefore, Article 9 has been deleted.

Drafting suggestions:

CHAPTER II
IDENTIFICATION OF REPORTING ENTITIES ~~THAT DO NOT HAVE MINIMUM SUBSTANCE FOR THE PURPOSES OF THIS DIRECTIVE~~

*Article ~~6~~**4***

~~Minimum substance~~Hallmarks for the identification of reporting entities

1. Member States shall require entities that are not excluded entities within the meaning of Article 2a, to ~~report to the tax authority of the Member State of the entity, on a yearly basis,~~ **assess for each tax period** whether or not ~~in the relevant tax period~~ they meet **one or more of the hallmarks set out in paragraph 2** ~~the criteria set out in paragraph 3~~.

~~2. An entity that reports that it does not meet both the criteria set out in point (a) of paragraph 3 and at least three out of the four criteria set out in points (b) to (e) of paragraph 3, shall be presumed to be a shell entity for the relevant tax period and for the purposes of this Directive. The same presumption shall apply to an entity that, upon inspection by the tax authority, does not maintain available supporting documentary evidence in accordance with paragraph 4.~~

~~3~~. The ~~criteria for minimum substance~~**hallmarks** for the purposes of ~~this Directive~~ **the assessement referred to in paragraph 1** shall be the following:

(a) ~~at least one of the~~**no** managing person~~s~~ that ~~have~~ **has** the power to bind the entity towards third parties is a natural person that:

(i) is resident for tax purposes in the Member State of the entity or in a Member State within a distance from the Member State of the entity that allows commuting on a daily basis;

(ii) is qualified and authorised to take **binding** decisions in relation to the activities, assets or rights that generate relevant income for the entity;

(iii) actively and independently uses the authorisation referred to in point (ii) in the Member State of the entity; and

(iv) does not perform the functions referred to in points (ii) and (iii) in more than ~~four~~ **ten** enterprises that are not associated enterprises;

(b) the entity has **no** premises in the Member State of the entity available for its **own** use, either separately or together with its associated enterprises;

(c) the entity has ~~at least one~~ **no** own and active bank account or an electronic store of monetary value in the Union;

(d) ~~at least~~ **less than** five full-time equivalent employees of the entity perform a majority of their working hours in the Member State of the entity, or a majority of the employees of the entity perform **the** ~~a~~ majority of their working hours ~~in~~ **outside** the Member State of the entity;

(e) the majority of the meetings of the board of directors of the entity take place ~~in~~ **outside of** the Member State of the entity.

3.~~4.~~ **An entity shall be considered as a reporting entity for the purposes of this Directive where it assesses, in accordance with paragraphs 1 and 2, that it meets either:**

(a) the hallmark set out in paragraph 2 point (a) and at least two hallmarks listed in points (b) to (e); or

(b) at least four hallmarks listed in paragraph 2.

An entity shall also be considered as a reporting entity when, upon inspection, it does not make the supporting documentary evidence available in accordance with paragraph 4 of this Article or paragraph 2 of Article 2a.

4. Member States shall require entities **that are not excluded entities within the meaning of Article 2a** ~~liable to report in accordance with paragraph 1~~ to maintain documentary evidence**,** in support of their **assessment of hallmarks referred to in this Article, and make it** ~~reporting~~ available for inspection ~~at the request of the tax authority of the Member State of the entity~~ in accordance with national law. ~~The documentary evidence shall relate to the criteria that the entity declared to have met or not met and provide proof for that declaration.~~

~~*Article 9*~~

~~***Rebuttal of the presumption***~~

[Deleted]

Questions to delegations on Article 4 (former Article 6) and Article 9:

Q1: Do you agree to the drafting suggestions aimed to adjust the test of minimum substance and shape it into a'hallmark', as discussed at the June HLWP?

Q2: Do you agree that the hallmarks set out in Article 4 are suitable to properly identify the high-risk cases?

3. REPORTING OBLIGATION AND EXCHANGE OF INFORMATION

Explanations on Articles 5 and 6 of the UNSHELL Directive and Article 8af of the DAC:

Under the new approach, meeting certain combination of 'hallmarks' would trigger a reporting requirement for the underlying entities. The relevant entities would be obliged to report to the tax authority every year. The details of reporting are set out in the revised Article 5. Reporting should take place in the annual tax return, and if there is no such tax return, in accordance with national law.

A definition of the term 'reporting entity' should be added to Article 3(13), to reflect the changes under the new approach. There would no longer be a definition of 'shell entity', but only of entities that need to report when they are captured by a combination of hallmarks, as prescribed in Article 4(3):

(13) 'reporting entity' means any entity that meets the conditions of Article 4 paragraph 3 for mandatory reporting under this Directive.

In Article 6(1)(a) the numbering would have to be aligned, 8ad is used for DAC8 and 8ae is used for DAC9.

In Article 8ad(2)(e), a clarification has been added, to identify Member States likely to be concerned, other than those of the beneficial owner(s)/shareholder(s).

It is also suggested to modify the implementation deadlines, in order to reflect the time that has elapsed since the start of the discussions of this file.

Article 6 on the amendments to the DAC will require updates, to be aligned with DAC9. For the time being it is proposed to discuss it in its current form until DAC9 is finalized.

Drafting suggestions:

*Article ~~10~~**5***

Filing of ~~I~~information ~~regarding~~ by ~~shell~~ reporting entities

Member States shall require **reporting** entities ~~that are presumed to be shell entities under Article 6(2),~~ to ~~provide~~ **file** ~~the tax authority of the Member State of the entity at the time of reporting under Article 6(1) with~~ the following information **for each tax period**:

1. **the hallmarks that they meet in accordance with Article 4 paragraph 2;**

2.~~1.~~ the identification of the entity's shareholders~~, as defined in Article 3(7) of this Directive,~~ including their name, tax identification number (TIN), or in the absence of a TIN, the date and place of birth (in the case of an individual) and residence for tax purposes;

3.~~2.~~ the identification of the entity's beneficial owner(s), including their name, TIN, or in the absence of a TIN, the date and place of birth **(in the case of an individual)** and residence for tax purposes;

4.~~3.~~ the identification of other Member States, if any, likely to be concerned by the reporting of the entity, in particular the source state of relevant income and/or relevant assets.

For the purpose of the first subparagraph, the reporting entity shall file the aforementioned information in their tax return. Where a Member State does not require annual filing of a tax return, it shall require the reporting entity to file the aforementioned information to the tax authority, in accordance with national law.

CHAPTER I**II**~~V~~
EXCHANGE OF INFORMATION

*Article ~~13~~**6***
Amendments to Directive 2011/16/EU

Directive 2011/16/EU is amended as follows:

(1) in Article 3, point 9 is amended as follows:

(a) point (a) is replaced by the following:

"(a) for the purposes of Article 8(1) and Articles 8a to **[**8af**]**, the systematic communication of predefined information to another Member State, without prior request, at pre-established regular intervals; for the purposes of Articles 8(1) and 8af, reference to available information relates to information in the tax files of the Member State communicating the information, which is retrievable in accordance with the procedures for gathering and processing information in that Member State;"

(b) point (c) is replaced by the following:

"(c) for the purposes of provisions of this Directive other than Article 8(1) and (3a) and Articles 8a to 8af, the systematic communication of predefined information provided in points (a) and (b) of this point."

(2) In Section II of Chapter II, the following Article 8ad is added:

"Article 8af
Scope and conditions of mandatory automatic exchange of information according to Directive [OP]

1. The competent authority of the Member State where the **reporting** entity is resident for tax purposes shall, by means of automatic exchange, inform the competent authorities of all other Member States, in accordance with paragraph ~~4~~ **2** of this Article and the applicable practical arrangements adopted

pursuant to Article 21. The automatic exchange shall take place within two months following the end of the quarter in which **a reporting entity has filed the information required in accordance with Article 5 of Directive [OP].**~~:~~

~~(a) the entity was presumed to be a shell entity according to Article 6(2) of Council Directive [OP] without requesting a rebuttal of the presumption according to Article 9(1) of the same Directive;~~

~~(b) a notice under Article 9(2) of Council Directive [OP] was issued concluding that the entity has not rebutted the presumption of being a shell entity; or~~

~~(c) the period of six months or one year referred to in Article 9(2) of Council Directive [OP] has ended without any notice issued under that Article.~~

~~2. Where a Member State concludes, including by way of an audit, that an entity, which has not reported in accordance with Article 6(1) of Council Directive [OP], does not meet the criteria of minimum substance laid down in Article 6(3) of Council Directive [OP], or where such a report has been found to be incorrect, the competent authority of that Member State shall, by means of automatic exchange, communicate such information within two months following the end of the quarter after the date it becomes available, to the competent authorities of all other Member States, in accordance with paragraph 4 of this Article and the applicable practical arrangements adopted pursuant to Article 21.~~

~~3. Where following an exchange of information pursuant to paragraphs 1 or 2, a Member State concludes that an entity is no longer considered a shell entity in accordance with Articles 6 and 9 of Council Directive [OP], the competent authority of a Member State shall, by means of automatic exchange, communicate such information within two months following the end of the quarter after the date it becomes available to the competent authorities of all other Member States, in accordance with the applicable practical arrangements adopted pursuant to Article 21.~~

~~The information to be communicated under the first subparagraph shall be, regarding each entity, the information referred to in point a of paragraph 4.~~

~~4~~**2**. The information to be communicated by a competent authority of a Member State pursuant to paragraph~~s~~ 1 ~~and 2~~ shall include regarding each **reporting** entity, ~~where available,~~ the following:

(a) the name, the tax identification number (TIN)**,** ~~and~~ address of the **reporting** entity **and residence for tax purposes**;

(b) detail of the hallmarks set out in Article 4 paragraph 2 that make the entity a reporting entity;

(c) ~~(b)~~ the identification of the entity's shareholders, as defined in Article 3, point 7 of Council Directive [OP], including their name, TIN, or in the absence of a TIN, date and place of birth (in the case of an individual), and residence for tax purposes;

(~~c~~**d**) the identification of the entity's beneficial owner(s), as defined in Article 3, point (6) of Directive (EU) 2015/849 of the European Parliament and of the Council including their name, TIN, or in the absence of a TIN, date and place of birth **(in the case of an individual)**, and residence for tax purposes;

(~~d~~**e**) the identification of the other Member States, if any, likely to be concerned by the reporting of the entity**, in particular the source state of relevant income and/or relevant asssets.**~~;~~

~~(e) the declaration provided by the entity, in accordance with Article 6(1) of Directive [OP].~~

~~(f) whether information is exchanged due to subparagraphs a), b) or c) of the first paragraph or the second paragraph of this Article.~~

~~5.~~**3.** The communication pursuant to paragraph ~~4~~ **2** of this Article shall take place using the standard computerised format referred to in Article 20(5). The first information shall be communicated by [date].

~~6.~~**4.** For the purposes of paragraphs 1 **and** ~~to~~ ~~4~~ **2** of this Article, 'entity' **and 'reporting entity'** shall mean entity **and reporting entity** as defined **respectively** in Article 3, point (1) **and (14)** of Directive [OP].

(3) in Article 20, paragraph 5 is replaced by the following:

"5. The Commission shall, by means of implementing acts, adopt standard forms, including the linguistic arrangements, in the following cases:

(a) for the automatic exchange of information on advance cross-border rulings and advance pricing arrangements pursuant to Article 8a before 1 January 2017;

(b) for the automatic exchange of information on reportable cross-border arrangements pursuant to Article 8ab before 30 June 2019;

(c) for the automatic exchange of information on **reporting** entities ~~that do not have minimum substance~~ for the purposes of Directive [OP] pursuant to Article 8af before **[**~~1 January~~**30 June** ~~[~~202**7**~~5~~].

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 26(2).

Those standard forms shall not exceed the components for the exchange of information listed in Article 8a(6), Article 8ab(14) and Article 8af(4**2**), and such other related fields which are linked to these components which are necessary to achieve the objectives of Articles 8a, 8ab and 8ad, respectively.

The linguistic arrangements referred to in the first subparagraph shall not preclude Member States from communicating the information referred to in Articles 8a, 8ab and 8ad in any of the official languages of the Union. However, those linguistic arrangements may provide that the key elements of such information shall also be sent in another official language of the Union.";

(4) in Article 21, paragraph 5 is replaced by the following:

"5. The Commission shall by 31 December 2017 develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of Article 8a(1) and (2) shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

The Commission shall by 31 December 2019 develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of Article 8ab(13), (14) and (16) shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

The Commission shall by [~~31 March 2025~~**1 January 2028**] develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of Article 8ad(1) ~~, (2) and (3)~~ shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

The competent authorities of all Member States shall have access to the information recorded in that directory. The Commission shall also have access to the information recorded in that directory, however within the limitations set out in Articles 8a(8) and 8ab(17). The Commission shall not have access to the information referred to in Article 8ad. The Commission shall, by means of implementing acts, adopt the necessary practical arrangements for the implementation of the first, second and third subparagraph of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 26(2).

Until that secure central directory is operational, the automatic exchange provided for in Article 8a(1) and (2), Article 8ab(13), (14) and (16) and Article 8ad(1)~~, (2) and (3)~~ shall be carried out in accordance with paragraph 1 of this Article and the applicable practical arrangements.".

Questions to delegations on Articles 5 and 6 of the UNSHELL proposal for a directive and Article 8af of the DAC:

Q1: Do you have any comments, further drafting suggestions or other ideas on the above drafting suggestions?

4. ADMINISTRATIVE ACTIONS

Explanations on Article 7 and on deletion of former Chapter III (Tax consequences):

Former Chapter III on tax consequences (Articles 11 and 12) would be deleted from the text, as the new approach does not include tax consequences within the scope of the Directive. Article 1 on the Subject Matter would also change accordingly, to reflect this shift. Under the Commission´s original proposal, tax consequences were expected to take the shape of anti-tax avoidance measures, which were prescribed in the proposal and the national tax authorities would have to apply if the circumstances laid down in the proposal occurred. Under the new approach, no such exercise would be envisaged. Instead of tax consequences, the authorities would have to endeavour to undertake the necessary 'administrative actions'.

An important difference from the previous text is that administrative actions under the new approach are meant to refer to the Member State receiving the data exchanged. The receiving Member State is the one that may have incurred loss of tax, therefore they have the interest to take the necessary actions to remedy the situation. Administrative actions could include various measures based on Member States' domestic rules, starting with matching the data from a central directory and applying risk management tools. The proposal does not prescribe specific measures, for example audits are not foreseen, however, depending on the concrete situation, they may be needed and can be used by a Member State. It is the Member State's sole discretion to decide what kind of 'administrative action' they apply.

Drafting suggestions:

~~CHAPTER III~~
~~Tax consequences~~

[Deleted]

CHAPTER IV
Administrative actions

Article 7
Administrative actions by Member States identified

A Member State which is identified under point (c), (d) or (e) of Article 8af of Directive 2011/16/EU shall endeavour to undertake the necessary administrative actions within a reasonable time to confirm whether the reporting entity is used to reduce the tax liability of its shareholder(s) or of its beneficial owner(s) or any other associated enterprise, that is resident for tax purpose in that Member State.

<u>Questions to delegationson Article 7:</u>

Q1: Do you support the reference to 'administrative actions', as it is now formulated in the new Article 7 (i.e. "best efforts" approach)? Could you mention examples of 'administrative actions' that are typical in your jurisdiction?

Q2: Do you think that there should be tools for dispute resolution between Member States?